IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3662 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUNICIPAL CORPORATION FOR THE CITY OF RAJKOT - Petitioner(s)

Versus

GOVINDBHAI M SOLANKI - Respondent(s)

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Appearance :

MR ARUN H MEHTA for Petitioner(s) : 1,
MR DD VYAS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/08/2005

ORAL JUDGMENT

1. In this petition under Article-227 of the Constitution of India, the petitioner-Rajkot Municipal Corporation has challenged the legality and

validity of the order granting interim injunction granted by the learned Civil Judge (SD) passed below Exh.5 passed in Civil Suit No.853 of 1986, by which, the learned Civil Judge (SD), Rajkot granted exparte ad-interim injunction restraining the Rajkot Municipal Corporation from demolishing any portion of the law rise, high rise buildings and shopping centers etc. in the entire Rajkot Municipal Corporation.

2. It appears from the record that the respondent herein at the relevant time was elected Corporator of the Rajkot Municipal Corporation filed Civil Suit No.853 of 1986 in the Court of learned Civil Judge(SD), Rajkot for permanent injunction and declaration that the Corporation has no authority to remove and/or demolish the construction of law rise, high rise building and the shopping centers situated within local limits of Rajkot Municipality. It appears from the record that in the said suit, he has also submitted an application below Exh.5 for interim injunction under Order-39 Rule-1 & 2 of the Code of Civil Procedure and the learned Trial Court granted

exparte ad-interim injunction in the said application below Exh.5 which is challenged by the present petitioner in this Special Civil Application.

3. This Court while admitting the present Special Civil Application has granted stay of the implementation and operation of the ad-interim injunction granted by the trial court passed below Exh.5 in the aforesaid Civil Suit No.853 of 1986.

4. Shri Arun H. Mehta, learned advocate appearing on behalf of the Rajkot Municipal Corporation has vehemently submitted that the learned trial court ought not to have granted exparte ad-interim injunction in the suit filed by the respondent who had no locus and who had no personal interest and that as such, the suit itself was not maintainable at the instance of the respondent and the trial court has not considered the said suit considering the provisions of Order-1 Rule-1 of the Code of Civil Procedure and that more particularly, when the said suit was not filed in the representative capacity as contemplated under Order-1 Rule-8 of the Code of

Civil Procedure and therefore, it is requested to quash and set aside the order passed by the trial court.

5. Shri Mehta, learned advocate has also relied on certain decisions but since the same are not relevant to the facts on hands, they are not referred to in the present judgment. In short, Shir Mehta, learned advocate for the petitioner relying on the aforesaid grounds, requested to allow the present Special Civil Application.

6. Shri D.D.Vyas, learned Senior Advocate appearing on behalf of the respondent is not in position to satisfy this Court with regard to maintainability of the suit at the instance of the respondent and/or support the exparte ad-interim injunction granted by the learned trial court and the relief which was granted by the trial court by way of exparte ad-interim injunction except the fact that it is an exparte ad-interim injunction and therefore, submitted that the petition is not maintainable.

7. Heard the learned advocates appearing on behalf of the parties.

8. It is true that what is challenged in the present Special Civil Application is exparte ad-interim injunction granted by the learned trial court passed below Exh.5 in Civil Suit No.853 of 1986. However, in view of the fact that present Special Civil Application came to be entertained by this Court by issuing RULE and even this Court granted stay of the order passed by the learned trial court, it cannot be said that the present Special Civil Application is not maintainable and/or not required to be entertained. When it is found by this Court that exercise of the powers by the learned trial court even granting exparte ad-interim injunction of such a nature, is perverse and exceeding the jurisdiction, this Court will certainly interfere with such an order passed by the Court below and set aside the order. It is required to be noted that the respondent claims to be a Corporator of the Rajkot Municipal Corporation and in that capacity, he filed the suit praying for permanent injunction restraining

the Corporation from demolishing the construction of law rise, high rise and / or shopping centers situated within local limits of Rajkot Municipal Corporation. It is required to be noted that the petitioner had not pointed out any personal interest in any of the buildings. Considering the provisions of the Code of Civil Procedure, more particularly, Order-1 Rule-1 only those persons may be joined as the plaintiff in the suit where any right to relief in respect of or arising out of the same act or transaction or series of acts or transaction is alleged to exist in such persons whether jointly, severally or in the alternative and therefore, what is required is having any right to relief or interest. Therefore, as such, the suit filed by the respondent, was not maintainable at all and more particularly, for the relief which is sought in the said suit. It is also required to be noted that the said suit was not filed in any representative capacity as contemplated under O-1 R-8 and no such application was made at the instance of the respondent – original plaintiff and therefore, the suit was also not maintainable and/or relief which

was granted, could not have been granted by the trial court. Considering the interim relief which was sought and even the main prayer which was sought in the suit, the same could not have been granted by the trial court. Under the circumstances, granting of such relief by way of interim injunction and even in the suit at the instance of plaintiff like the respondent herein who had no personal interest and/or right, the trial court has exercised the jurisdiction not vested in it. Under the circumstances, the impugned order cannot be sustained and the same is required to be quashed and set aside. However, while quashing and setting aside the impugned order, this Court considers fit to observe that before granting such type of ad-interim injunction and in such type of suit, the trial court/s should be more cautious and consider provisions of the Code of Civil Procedure, more particularly, Order-1 Rule-1 and consider whether such type of relief can be granted or not restraining the local authority from taking any action in accordance with law, cannot be passed.

9. For the reasons stated hereinabove, the petition succeeds. The ex-parte ad-interim injunction granted by the learned Civil Judge (SD), Rajkot passed below Exh.5 dated 21-7-86 passed in Civil Suit No.853 of 1986 is hereby quashed and set aside.

10. Rule is made absolute to the aforesaid extent and the respondent – Govindbhai M. Solanki shall pay cost which is quantified at Rs.5,000/- for the present Special Civil Application to the petitioner immediately.

[M.R.Shah, J.]

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